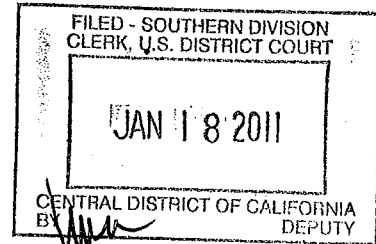


1. James Davis Bennett, Pro Se
2. FCI Safford
3. Federal Correctional Institution
4. P.O. Box 9000
5. Safford, AZ 85548



7. UNITED STATES DISTRICT COURT
8. FOR THE
9. CENTRAL DISTRICT OF CALIFORNIA

10. UNITED STATES OF AMERICA,

11. Plaintiff,

12. vs.

13. JAMES DAVIS BENNETT,

14. Defendant.

CASE NO. SA CR 03-25(B)AHS

DEFENDANT'S MOTION TO CORRECT
THE COURT'S JUDGMENT AND
PROBATION/COMMITMENT ORDER AND
THE PROBATION OFFICER'S
PRESENTENCE REPORT; FRCRP'S
RULE 36

15. 1. Rule 36 of the Federal Rules of Criminal Procedures
16. provides for the correction of clerical errors which occur
17. and are identified within the Court's Records.

18. 2. While the general rule is that the records and decrees
19. of the court cannot be altered after the term, there is a
20. well-recognized exception in the case of mere clerical
21. errors. United States vs Kaye, 739 F.2d 488, 491(9th Cir.
22. 1984 quoting Rupinski v. United States, 4 F.2d 17, 18(6th Cir.
23. 1925)).

24. 3. In the case before the Court, we clearly have three
25. clerical errors which appear on the face of the Court's
26. Judgment and Probation/Commitment Order in addition to those
27. within the Probation Officer's Presentence Report which
28. coincide with the Court's order.

1. 4. The Probation/Commitment Order clearly makes reference
 2. to a Second Superseding Indictment as support for the order
 3. and its directives (exhibit A). This is impossible because the
 4. record transcripts are unambiguous and absolutely prove that
 5. the Court never intended to nor did it ever submit the Second
 6. Superseding Indictment for jury deliberations. The following
 7. colloquy from the December 15, 2005 transcripts on page 59,
 8. lines 3 through 19 proves it was never Judge Alicemarie H.
 9. Stotler's intention to present the Second Superseding Indict-
 10. ment for jury deliberations:

11. **Judge Stotler:** All right. Let's take a look at this verdict
 12. form that came back to us that has the counts grouped one
 13. to four, five to ten and then count twelve, the general ver-
 14. dict, which I know defendant's objection is preserved, too.
 15. Anything else that the parties want to add about this verdict?
 16. I'm about to part with in and give it to the clerk. (pause.)
 17. The Clerk simply points out that you are referencing a Second
 18. Superseding Indictment that is not going to be before the
 19. jury. I have modified the jury instructions to make it clear
 20. that when we reference the Second--when we say "Indictment,"
 21. we are referencing the Second Superseding Indictment, but that
 22. is not what is actually going to be in front of the jury...
 23. Mr. Sagel, was there anything you wanted to add?(exhibit A
 24. page 60, line 1).

18. **US Attorney Sagel:** No. Actually, your courtroom deputy[clerk]
 19. makes a good point. I would propose everywhere I had it as
 20. "Second Superseding Indictment," I added the word "Trial."
 21. (exhibit A page 60, lines 2-5)

22. **Judge Stotler:** No, you are not going to do that. I'm not go-
 23. ing to have a jury returning verdicts on some nonexistent
 24. document. There is no such thing as a Trial Indictment.
 25. (exhibit A page 60, lines 6-10)

26. The next colloquy from the January 4, 2006 transcripts on
 27. page 3, lines 3-11 proves that Judge Stotler submitted the
 28. Trial Indictment for jury deliberations instead of the Second
 29. Superseding Indictment as is represented in her Judgment and
 30. Probation/Commitment Order as well as the Probation Officer's
 31. Presenting Report:

1. **Judge Stotler:** We are resuming in the matter United States
2. versus Bennett. We have all jurors, Defendant, counsel. And we
3. resume the instruction of the jury. And members of the jury,
4. I do assure you that a copy of my instructions will be supplied
5. to you in the jury room, what we covered yesterday and
6. what we cover today. The **Second Superseding Indictment**
7. referred--excuse me, submitted to you as the **Trial indictment**
8. ... (exhibit A)

9. 5. The above proves that Judge Stotler's Judgment and
10. Probation/Commitment Order has a clerical error because it
11. is supported by the **Second Superseding Indictment** instead of
12. the **Trial Indictment** which was used by the jury for its de-
13. liberations. We herein request that this is corrected in both
14. the Judgment Order as well as the Presentencing Report prior
15. to resentencing on January 21, 2011.

16. 6. Also, the Probation/Commitment Order clearly identifies
17. Chase Manhattan as the victim in Count of Conviction One
18. and Equicredit as the victim in Count of Conviction Two
19. (exhibit B). This too is absolutely impossible because, as
20. exhibit B clearly proves, the Grand Jury alleged that in
21. count one the crime victim was CIT Group and in count two the
22. crime victim was Mortgage Portfolio Services. We would also
23. request that this is corrected in both the Judgment Order as
24. well as the Presentencing Report prior to resentencing on
25. January 21, 2011.

26. 7. Finally, Probation Officer-Wendy Shorr-stated "Information
27. pertinent to the offense was obtained from the **Indict-**
28. **ment**; the investigative reports of the Federal Bureau of In-
vestigation(FBI) and statements made by the Assistant United
States Attorney(AUSA), and case agent(CA)." (see Presentence
Report paragraph 15).

//

1. 8. The **Indictment** referenced by Wendy Shorr-Probation
2. Officer who prepared the Presentencing Report-is inconsistent
3. with the **Second Superseding Indictment** which Ms Shorr claims
4. to have extracted her information because in the report's
5. paragraphs 44-45 she lists some 32 victims when the **Second**
6. **Superseding Indictment** only lists 11. We would also request
7. that this is corrected in the Presentencing Report prior to
8. resentencing on January 21, 2011.

9. 9. The above requests are consistent with U.S. Sentencing
10. Guidelines Manual § 6A1.3(a); therefore, this motion seeks
11. to have the Probation's investigation (Rule 32(c)(1)) complete
12. and the Court's clerical errors resolved by the January 21,
13. 2011 hearing date.

14. Dated this 4th day of January 2011,

15. By: _____

James Davis Bennett

P.O. Box 675733

Rancho Santa Fe, Ca. 92067

17. //

18. //

19. //

20.

21.

22.

23.

24.

25.

26.

27.

28.

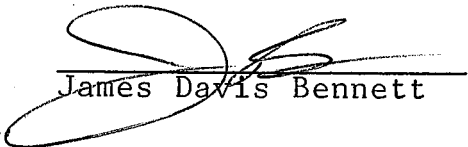
CERTIFICATE OF SERVICE

CASE NAME: United States of America vs James Davis Bennett

CASE NUMBER: SA CR 03-25(B)AHS

I certify that I've served the Defendant's Motion to Correct the Court's Judgment and Probation/Commitment Order on the parties listed below in a manner described:

<u>PARTY SERVED</u>	<u>METHOD OF SERVICE</u>	<u>DATE SERVED</u>
Attn: Brett A. Sagel US Attorney's Office 411 West Fourth Street #8000 Santa Ana, Ca. 92701	U.S. Mail	1.10.2011
Attn: Wendy Shore/Supervisor United States Probation Dept. 411 West Fourth Street Santa Ana, Ca 92701	U.S. Mail	1.10.2011


James Davis Bennett

1.10.2011
Date

EXHIBIT A

UNITED STATES OF AMERICA vs.

Docket No. SA CR 03-25(B)-AHS

Defendant JAMES DAVIS BENNETT
 James Butler Bennett; Jim Bennett;
 James Bennet, Jr.; James Butler
 Bennet; James Butler; Ralph Leon
 James Bennett; James David Bennett;
 James Davis Bennet; James Brown;
 akas: John Butler

Social Security No. 7 5 8 4

(Last 4 digits)

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government, the defendant appeared in person on this date.

MONTH	DAY	YEAR
OCT.	06	2006

COUNSEL ☒ WITH COUNSEL

In Pro Se

(Name of Counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea.

☐ NOLO
CONTENDERE

☐ NOT
GUILTY

FINDING

There being a finding/verdict of ☒ GUILTY, defendant has been convicted as charged of the offense(s) of:
 Wire Fraud, Aiding and Abetting in violation of 18 USC §§ 1343, 2(b) as charged in Counts 1 through 4 of the Second
 Superseding Indictment; Bank Fraud, Aiding and Abetting in violation of 18 USC §§ 1344, 2(b) as charged in Counts 5
 through 10 of the Second Superseding Indictment

**JUDGMENT
AND PROB/
COMM
ORDER**

The Court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause
 to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered
 that: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant is hereby committed to the
 custody of the Bureau of Prisons to be imprisoned for a term of:

One hundred and twenty-one (121) months on Counts 1-10 of the Second
 Superseding Indictment. This term consists of sixty (60) months on each of
 Counts 1-4 and one hundred and twenty-one (121) months on each of Counts 5-10 of
 the Second Superseding Indictment, all to be served concurrently.

IT IS FURTHER ORDERED that the defendant shall pay to the United States a
 special assessment of \$1,000.00, which is due immediately.

IT IS FURTHER ORDERED that the defendant shall pay restitution in the total
 amount of \$751,050.00 pursuant to 18 U.S.C. § 3663A. The amount of restitution
 ordered shall be paid forthwith as follows:

<u>Victim</u>	<u>Amount</u>	<u>Count of Conviction</u>
Chase Manhattan (CIT Group)	\$ 90,000.00	Count 1
Equicredit A Division of Bank of America	\$ 88,750.00	Count 2
Flagstar Bank	\$493,014.00	Counts 5, 6, 7
Greenpoint Mortgage	\$ 79,285.00	Count 3

1 GOVERNMENT'S ARGUMENT REGARDING COUNT TWELVE, THE THEORIES
2 WE SHOULD BE PERMITTED TO ARGUE.

3 THE COURT: ALL RIGHT. LET'S TAKE A LOOK AT THIS
4 VERDICT FORM THAT CAME BACK TO US THAT HAS THE COUNTS
5 GROUPED ONE TO FOUR, FIVE TO TEN AND THEN COUNT TWELVE, THE
6 GENERAL VERDICT, WHICH I KNOW DEFENDANT'S OBJECTION IS
7 PRESERVED, TOO.

8 ANYTHING ELSE THAT THE PARTIES WANT TO ADD ABOUT
9 THIS VERDICT?

10 I'M ABOUT TO PART WITH IT AND GIVE IT TO THE
11 CLERK.

12 (PAUSE.)

13 THE COURT: THE CLERK SIMPLY POINTS OUT THAT YOU
14 ARE REFERENCING A SECOND SUPERSEDING INDICTMENT THAT IS NOT
15 GOING TO BE BEFORE THE JURY. I HAVE MODIFIED THE JURY
16 INSTRUCTIONS TO MAKE IT CLEAR THAT WHEN WE REFERENCE THE
17 SECOND -- WHEN WE SAY "INDICTMENT," WE ARE REFERENCING THE
18 SECOND SUPERSEDING INDICTMENT, BUT THAT IS NOT WHAT IS
19 ACTUALLY GOING TO BE IN FRONT OF THE JURY. I DON'T KNOW IF
20 THAT'S A PROBLEM OR NOT. BUT OTHER THAN THAT, HOW ABOUT THE
21 VERDICT FORM WITH DEFENDANT'S SIDE?

22 ANYTHING ELSE TO BE ADDED BY WAY OF OBJECTION TO
23 THIS CURRENT VERSION?

24 MR. MEZA: NO, YOUR HONOR.

25 THE COURT: ALL RIGHT. THANK YOU.

1 MR. SAGEL, WAS THERE ANYTHING YOU WANTED TO ADD?

2 MR. SAGEL: NO. ACTUALLY, YOUR COURTROOM DEPUTY
3 MAKES A GOOD POINT. I WOULD PROPOSE EVERYWHERE WHERE I HAD
4 IT AS "SECOND SUPERSEDING INDICTMENT," I ADDED THE WORD
5 "TRIAL."

6 THE COURT: NO, YOU ARE NOT GOING TO DO THAT. I'M
7 NOT GOING TO HAVE A JURY RETURNING VERDICTS ON SOME
8 NONEXISTENT DOCUMENT. THERE IS NO SUCH THING AS A TRIAL
9 INDICTMENT. SO YOU CAN EITHER HAVE YOUR DEMONSTRATIVE TRIAL
10 INDICTMENT. I'LL CALL IT A TRIAL EXHIBIT OF THE SECOND
11 SUPERSEDING INDICTMENT. I DON'T CARE WHAT YOU WANT TO DO.

12 MR. SAGEL: THEN, I'M A LITTLE CONFUSED. ARE YOU
13 IN YOUR INSTRUCTIONS -- AND I JUST SAW IT IN YOUR TENTATIVE.

14 ARE YOU USING THE WORD "SECOND SUPERSEDING
15 INDICTMENT"?

16 THE COURT: ONLY ONCE.

17 MR. SAGEL: OKAY. I THOUGHT IT WAS SAYING YOU
18 WERE REPLACING THAT ONE. IF THAT'S THE CASE, THEN I'M FINE
19 WITH IT.

20 THE COURT: NO. IN THE FIFTH INSTRUCTION PROPOSED
21 BY THE GOVERNMENT, I'M JUST MAKING IT CLEAR THAT THE SECOND
22 SUPERSEDING INDICTMENT REFERRED TO AS "INDICTMENT IN THESE
23 INSTRUCTIONS" -- AND THEN I DON'T HAVE TO GO THROUGH SECOND
24 SUPERSEDING INDICTMENT EVERY TIME I SAY THE WORD
25 "INDICTMENT" IN THE JURY INSTRUCTIONS.

DATE 1/4/06

3

1 SANTA ANA, CALIFORNIA; WEDNESDAY, JANUARY 4, 2006; 9:00 A.M.

2 -000-

3 THE COURT: WE ARE RESUMING IN THE MATTER UNITED
4 STATES VERSUS BENNETT.

5 WE HAVE ALL JURORS, DEFENDANT, COUNSEL. AND WE
6 RESUME THE INSTRUCTION OF THE JURY.

7 AND MEMBERS OF THE JURY, I DO ASSURE YOU THAT A
8 COPY OF MY INSTRUCTIONS WILL BE SUPPLIED TO YOU IN THE JURY
9 ROOM, WHAT WE COVERED YESTERDAY AND WHAT WE COVER TODAY.

10 THE SECOND SUPERSEDING INDICTMENT REFERRED --
11 EXCUSE ME, SUBMITTED TO YOU AS THE TRIAL INDICTMENT AND
12 REFERRED TO IN MY INSTRUCTIONS AS THE INDICTMENT CHARGES
13 THAT THE OFFENSES ALLEGED WERE COMMITTED ON OR ABOUT A
14 CERTAIN DATE. ALTHOUGH IT IS NECESSARY FOR THE GOVERNMENT
15 TO PROVE BEYOND A REASONABLE DOUBT THAT THE OFFENSES WERE
16 COMMITTED ON A DATE REASONABLY NEAR THE DATE ALLEGED IN THE
17 INDICTMENT, IT IS NOT NECESSARY FOR THE GOVERNMENT TO PROVE
18 THAT THE OFFENSE WAS COMMITTED PRECISELY ON THE DATE
19 CHARGED.

20 THE EVIDENCE IN WHICH YOU ARE TO DECIDE WHAT THE
21 FACTS ARE CONSISTS OF THE SWORN TESTIMONY OF ANY WITNESS,
22 THE EXHIBITS WHICH HAVE BEEN RECEIVED INTO EVIDENCE AND ANY
23 FACTS AS TO WHICH ALL THE LAWYERS MAY HAVE STIPULATED.

24 SOME EVIDENCE DURING TRIAL MAY HAVE BEEN ADMITTED
25 FOR A LIMITED PURPOSE ONLY. IF I INSTRUCTED YOU THAT AN

DEBORAH D. PARKER, U.S. COURT REPORTER

EXHIBIT B

1 schemers received fees, commissions and profits.

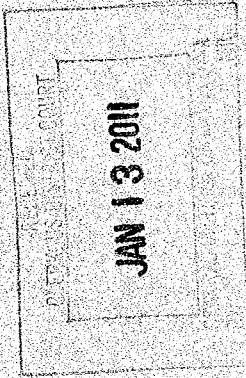
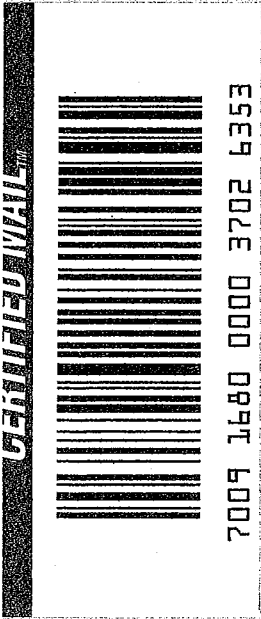
2 8. Within months of the resale of the residential
3 properties, the straw buyers typically defaulted on the loan
4 payments, leaving mortgage lenders with losses in excess of
5 \$1,000,000.

6 THE WIRINGS

7 9. On or about the dates set forth below, in the Central
8 District of California and elsewhere, for the purpose of
9 executing the above-described scheme to defraud and attempting to
10 do so, Defendant BENNETT, Rogers, Simon, Ibarra, Garcia, and
11 others caused to be transmitted in interstate commerce by wire
12 communications the following wire transfers from mortgage
13 lenders' accounts outside California to title insurance company
14 and escrow accounts in California.

15 <u>Count</u>	<u>Date</u>	<u>Funds Wired</u>
16 One	7/27/99	The CIT Group's \$270,000 mortgage loan for 17 the purchase of 2612 Griffith Avenue, Los 18 Angeles, California
19 Two	10/14/99	Mortgage Portfolio Services' \$233,750 20 mortgage loan for the purchase of 760 East 21 43rd Place, Los Angeles, California
22 Three	3/1/00	Greenpoint Mortgage Funding, Inc.'s \$225,250 23 mortgage loan for the purchase of 615 West 24 Imperial Highway, Los Angeles, California
25 Four	2/27/01	Laguna Capital Mortgage Corporation's 26 \$248,000 mortgage loan for the purchase of 27 860 Cerritos Avenue, Long Beach, California 28

James Davis Bennett/Reg#32589-112
FCI Safford
Federal Correctional Institution
P.O. Box 9000
Safford, AZ 85548



↔ 32589-112 ↔
District Court Judge
Attn: Audrey Collins
312 North Spring Street
LOS Angeles, CA - 90012
United States